

ESTTA Tracking number: **ESTTA271383**

Filing date: **03/11/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

|                                       |  |
|---------------------------------------|--|
| Name                                  | Johnson & Johnson  |
| Granted to Date of previous extension | 03/11/2009   |
| Address                               | One Johnson & Johnson Plaza<br>New Brunswick, NJ 08933-7001<br>UNITED STATES |

|                      |  |
|----------------------|--|
| Attorney information | Mary Pat Weyback<br>Drinker Biddle & Reath LLP<br>1500 K St. NW Suite 1100<br>Washington, DC 20005<br>UNITED STATES<br>dctrademarks@db.com, weyback@db.com, andrea.engel@db.com<br>Phone: 202-842-8800 |
|----------------------|--|

### Applicant Information

|                        |  |                        |            |
|------------------------|--|------------------------|------------|
| Application No         | 77332213   | Publication date       | 11/11/2008 |
| Opposition Filing Date | 03/11/2009   | Opposition Period Ends | 03/11/2009 |
| Applicant              | LUCKY BLUES INC.<br>245 5TH AVE., # 610<br>NEW YORK, NY 10001<br>UNITED STATES |                        |            |

### Goods/Services Affected by Opposition

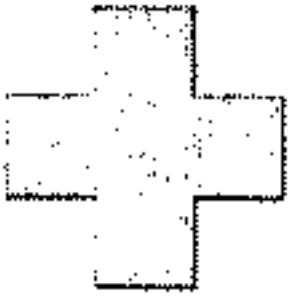
|   |
|---|
| Class 005.<br>All goods and services in the class are opposed, namely: Transdermal patches for use in the treatment of human body pains |
|---|

### Grounds for Opposition

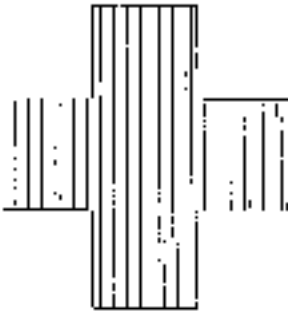
|                                      |                            |
|--------------------------------------|----------------------------|
| Deceptiveness                        | Trademark Act section 2(a) |
| False suggestion of a connection     | Trademark Act section 2(a) |
| Priority and likelihood of confusion | Trademark Act section 2(d) |


### Marks Cited by Opposer as Basis for Opposition


|                       |            |                       |            |
|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 54308      | Application Date      | 10/17/1905 |
| Registration Date     | 06/26/1906 | Foreign Priority Date | NONE       |

|                     |   |
|---------------------|---|
| Word Mark           | +   |
| Design Mark         |    |
| Description of Mark | THE TRADEMARK IS ILLUSTRATED IN THE ACCOMPANYING DRAWING, WHEREIN APPEARS A REPRESENTATION OF A RED GREEK CROSS.                            |
| Goods/Services      | Class U018 (International Class 005). First use: First Use: 1887/00/00 First Use In Commerce: 1887/00/00<br>MEDICINAL AND SURGICAL PLASTERS |

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 1870955   | Application Date      | 08/06/1993 |
| Registration Date     | 01/03/1995  | Foreign Priority Date | NONE       |
| Word Mark             | RED CROSS   |                       |            |
| Design Mark           |   |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 003. First use: First Use: 1898/00/00 First Use In Commerce: 1898/00/00 cotton for personal use<br>Class 005. First use: First Use: 1898/00/00 First Use In Commerce: 1898/00/00 sterile cotton for medical use |                       |            |

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 1888143   | Application Date      | 08/06/1993 |
| Registration Date     | 04/11/1995  | Foreign Priority Date | NONE       |
| Word Mark             | NONE  |                       |            |
| Design Mark           |                    |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 003. First use: First Use: 1898/00/00 First Use In Commerce: 1898/00/00 cotton for cosmetic use |                       |            |

|                       |   |                       |            |
|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 1889576   | Application Date      | 08/09/1993 |
| Registration Date     | 04/18/1995  | Foreign Priority Date | NONE       |
| Word Mark             | NONE  |                       |            |
| Design Mark           |    |                       |            |
| Description of Mark   | NONE  |                       |            |
| Goods/Services        | Class 005. First use: First Use: 1898/00/00 First Use In Commerce: 1898/00/00 first aid kits, adhesive bandages, topical preparations for medical and therapeutic use, medical adhesive tape, gauze, sterile cotton for medical purposes, and wound dressings |                       |            |

|                       |  |                       |            |
|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 2515970  | Application Date      | 10/20/1995 |
| Registration Date     | 12/11/2001   | Foreign Priority Date | NONE       |
| Word Mark             | NONE   |                       |            |
| Design Mark           |   |                       |            |
| Description of Mark   | The mark consists of a Red Greek Cross applied to a blue colored container for first aid kits. The dotted outline of the container is intended to show the position of the mark and is not a part of the mark. |                       |            |
| Goods/Services        | Class 005. First use: First Use: 1985/00/00 First Use In Commerce: 1985/00/00 first aid kits   |                       |            |

|                       |                           |                       |            |
|-----------------------|---------------------------|-----------------------|------------|
| U.S. Registration No. | 3178913                   | Application Date      | 10/18/2004 |
| Registration Date     | 12/05/2006                | Foreign Priority Date | NONE       |
| Word Mark             | JOHNSON&JOHNSON FIRST AID |                       |            |

|                     |   |
|---------------------|---|
| Design Mark         |   |
| Description of Mark | NONE  |
| Goods/Services      | Class 005. First use: First Use: 1993/00/00 First Use In Commerce: 1993/00/00 adhesive medical tapes, gauze pads, sterile rolled gauze, bandages and dressings for skin wounds, sterile cotton and cotton balls for medical use, first aid cream, medical plasters for the back, and first aid kits |

|             |  |
|-------------|--|
| Attachments | 71013666#TMSN.gif ( 1 page )( bytes )<br>74422556#TMSN.gif ( 1 page )( bytes )<br>74422859#TMSN.gif ( 1 page )( bytes )<br>75010166#TMSN.gif ( 1 page )( bytes )<br>76617076#TMSN.jpeg ( 1 page )( bytes )<br>HERBAL PATCH PLUS HP+ - Notice of Opposition.pdf ( 12 pages )(494808 bytes ) |
|-------------|--|

### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

|           |                    |
|-----------|--------------------|
| Signature | /Mary Pat Weyback/ |
| Name      | Mary Pat Weyback   |
| Date      | 03/11/2009         |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**In re Application Ser. No 77/332,213– HERBAL PATCH PLUS HP +**  
**Published: November 11, 2008**

\_\_\_\_\_  
JOHNSON & JOHNSON, :  
:  
Opposer, :  
:  
v. : Opposition No. \_\_\_\_\_  
:  
LUCKY BLUES, INC., :  
:  
\_\_\_\_\_  
Applicant. :

**NOTICE OF OPPOSITION**

JOHNSON & JOHNSON, a New Jersey corporation, having a principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933-7001 (“Opposer”), believes that it will be damaged by the registration of the mark shown in application Serial No. 77/332,213 - HERBAL PATCH PLUS HP + for transdermal patches for use in the treatment of human body pains in class 5; filed November 16, 2007, by Lucky Blues Inc., a New York corporation, having principal place of business at 245 5th Ave., # 610 New York, New York 10001 (“Applicant”); and hereby opposes the same pursuant to Section 13 of the Trademark Act of 1946 (15 U.S.C. § 1063).

As grounds for opposition it is alleged that:

1. Opposer has adopted and is using the mark Red Cross Design for medical and surgical plasters; first aid kits, adhesive bandages, topical preparations for medical and therapeutic use, medical adhesive tape, gauze, sterile cotton for medical purposes and wound dressings; and cotton for cosmetic use.

FILED ELECTRONICALLY  
March 11, 2009

Deborah Clark

2. Opposer has continuously used the Red Cross Design mark in connection with medical and surgical plasters since as early as 1887.

3. Opposer has continuously used the Red Cross Design mark in connection with cotton for cosmetic use since as early as 1898.

4. Opposer has continuously used the Red Cross Design mark in connection with first aid kits, adhesive bandages, topical preparations for medical and therapeutic use, medical adhesive tape, gauze, sterile cotton for medical purposes and wound dressings since as early as 1898.

5. Opposer has adopted and is using the mark RED CROSS for cotton for personal use and sterile cotton for medical use.

6. Opposer has continuously used the mark RED CROSS for cotton for personal use and sterile cotton for medical use since as early as 1898.

7. Opposer is the owner of:

- a. Reg. No. 54,308 – Red Cross Design, dated June 26, 1906, for medical and surgical plasters in class 5.
- b. Reg. No. 1,870,955 – RED CROSS, dated January 3, 1995, for sterile cotton for personal use in class 3 and sterile cotton for medical use in class 5.
- c. Reg. No. 1,888,143 – Red Cross Design, dated April 11, 1995, for cotton for cosmetic use in class 3.
- d. Reg. No. 1,889,576 – Red Cross Design, dated April 18, 1995, for first aid kits, adhesive bandages, topical preparations for medical and therapeutic use, medical adhesive tape, gauze, sterile cotton for medical purposes, and wound dressings in class 5.
- e. Reg. No. 2,515,970 – Red Cross Design, dated December 11, 2001, for first aid kits in class 5.
- f. Reg. No. 3,178,913 – JOHNSON&JOHNSON FIRST AID & Red Cross Design, dated December 5, 2006, for adhesive medical tapes, gauze pads,

sterile rolled gauze, bandages and dressings for skin wounds, sterile cotton and cotton balls for medical use, first aid cream, medical plasters for the back, and first aid kits in class 5.

Copies of the registrations are attached hereto.

8. On information and belief, Applicant has not used the HERBAL PATCH PLUS HP + mark in commerce in connection with the goods identified in application Serial No. 77/332,213 prior to the filing date of November 11, 2008.

9. The goods on which Opposer uses its marks Red Cross Design and RED CROSS and the goods for which Applicant seeks to register its HERBAL PATCH PLUS HP + mark are related.

10. The goods on which Opposer uses the marks Red Cross Design and RED CROSS and the goods for which Applicant seeks to register its HERBAL PATCH PLUS HP + mark may be sold and/or rendered through the same channels of trade and to the same class of purchasers.

11. Applicant's HERBAL PATCH PLUS HP + mark completely subsumes Opposer's famous Red Cross Design mark, and is, therefore, substantially similar in appearance and commercial impression.

12. Any registration which matures from application Serial No. 77/332,213 would create a legal presumption that Applicant has the right to display the Cross Design portion of its mark in red, in violation of 18 U.S.C. § 706.

13. Any registration which matures from application Serial No. 77/332,213 would be read by competitors in the field as enabling Applicant to display the Cross Design depicted therein in any color, including red, in violation of 18 U.S.C. § 706.

14. The use and registration by Applicant of a mark incorporating a cross design displayed in red for the goods identified in application Serial No. 77/332,213 is likely to cause

confusion, mistake or deception by having the public erroneously assume or believe that those goods emanate from Opposer, or are in some other way associated or connected with Opposer because of Opposer's prior use and registration of the marks Red Cross Design and RED CROSS, all to Opposer's irreparable damage.

For the reasons set forth herein, Opposer believes and believing asserts that it will be damaged by the registration of application Serial No. 77/332,213. Accordingly, Opposer prays that this Opposition be sustained, and that Applicant be refused registration of the HERBAL PATCH PLUS HP + mark for the goods set forth in application Serial No. 77/332,213.

The \$300.00 filing fee is submitted herewith electronically. Should additional fees be required, please charge them to this firm's deposit account, No. 50-0573.

Respectfully submitted,

JOHNSON & JOHNSON

By: /Mary Pat Weyback/  
Norm D. St. Landau  
Mary Pat A. Weyback  
Drinker Biddle & Reath LLP  
1500 K Street, N.W., Suite 1100  
Washington D.C. 20005-1209  
Tel.: (202) 842-8800  
Fax: (202) 842-8465

*Counsel for Opposer*



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served on Applicant at the following address of record by first class mail, postage prepaid, this 17<sup>th</sup> day of March, 2009:

JIN CAO  
12 MERRY LANE  
JERICHO, NY 11753-1725

Debra Clark

# UNITED STATES PATENT OFFICE.

JOHNSON & JOHNSON, OF NEW BRUNSWICK, NEW JERSEY.

TRADE-MARK FOR MEDICAL AND SURGICAL PLASTERS.

No. 54,308.

Statement and Declaration.

Registered June 26, 1906.

Application filed October 17, 1905. Serial No. 13,666. Used ten years.

## STATEMENT.

*To all whom it may concern:*

Be it known that the JOHNSON & JOHNSON, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, and located and doing business in the city of New Brunswick, county of Middlesex, in said State, has adopted for its use a trade-mark, of which the following is a description.

The trade-mark is illustrated in the accompanying drawing, wherein appears a representation of a red Greek cross.

The trade-mark has been continuously used in the business of said corporation by it and its predecessors, from whom it derived title, since 1887.

The class of merchandise to which the

trade-mark is appropriated is medicinal and surgical articles, and the particular description of goods comprised in said class upon which said trade-mark is used is medicinal and surgical plasters.

The trade-mark is usually displayed on the wrappers, spools, containers, boxes, and other receptacles holding the goods by printing it directly thereon and by means of labels and in other customary ways.

JOHNSON & JOHNSON.  
R. W. JOHNSON,  
*President.*

Witnesses:

EDWARD NORRIS,  
LOUIS H. LEITHEISER.

## DECLARATION.

State of New Jersey, county of Middlesex, ss:

R. W. JOHNSON, being duly sworn, deposes and says that he is president of JOHNSON & JOHNSON, a corporation, the applicant named in the foregoing statement; that he believes that the foregoing statement is true; that he believes the said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the United States and particularly between New Jersey and Illinois

and between the United States and foreign nations and particularly with Cuba and Canada; and that the description drawing and specimens presented truly represent the trade-mark sought to be registered; and that the mark has been in actual use as a trade-mark of the applicant or its predecessors from whom it derived title for ten years next preceding the passage of the act of February 20, 1905, and that, to the best of his knowledge and belief, such use has been exclusive.

R. W. JOHNSON.

Subscribed and sworn to before me this  
14th day of Sept., 1905.

[L. s.]

CHARLES A. McCORMICK,  
*Notary Public.*

**Int. Cls.: 3 and 5**

**Prior U.S. Cls.: 44 and 51**

**United States Patent and Trademark Office**

**Reg. No. 1,870,955**

**Registered Jan. 3, 1995**

**TRADEMARK  
PRINCIPAL REGISTER**

**RED CROSS**

**JOHNSON & JOHNSON (NEW JERSEY CORPORATION)  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933**

**FOR: COTTON FOR PERSONAL USE, IN  
CLASS 3 (U.S. CLS. 44 AND 51).**

**FIRST USE 0-0-1898; IN COMMERCE  
0-0-1898.**

**FOR: STERILE COTTON FOR MEDICAL  
USE, IN CLASS 5 (U.S. CL. 44).**

**FIRST USE 0-0-1898; IN COMMERCE  
0-0-1898.**

**OWNER OF U.S. REG. NO. 54,308.**

**SER. NO. 74-422,554, FILED 8-6-1993.**

**GERALD C. SEEGARS, EXAMINING ATTORNEY**

**Int. Cl.: 3**

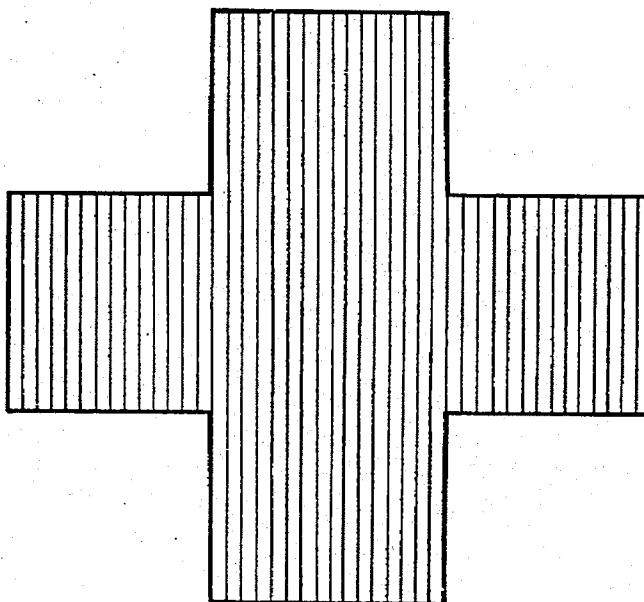
**Prior U.S. Cl.: 51**

**United States Patent and Trademark Office**

**Reg. No. 1,888,143**

**Registered Apr. 11, 1995**

**TRADEMARK  
PRINCIPAL REGISTER**



**JOHNSON & JOHNSON (NEW JERSEY CORPORATION)  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933**

**FOR: COTTON FOR COSMETIC USE, IN  
CLASS 3 (U.S. CL. 51).**

**FIRST USE 0-0-1898; IN COMMERCE  
0-0-1898.**

**OWNER OF U.S. REG. NO. 54,308.  
THE DRAWING IS LINED FOR THE COLOR  
RED.**

**SER. NO. 74-422,556, FILED 8-6-1993.**

**PATRICIA HORRALL, EXAMINING ATTORNEY**

**Int. Cl.: 5**

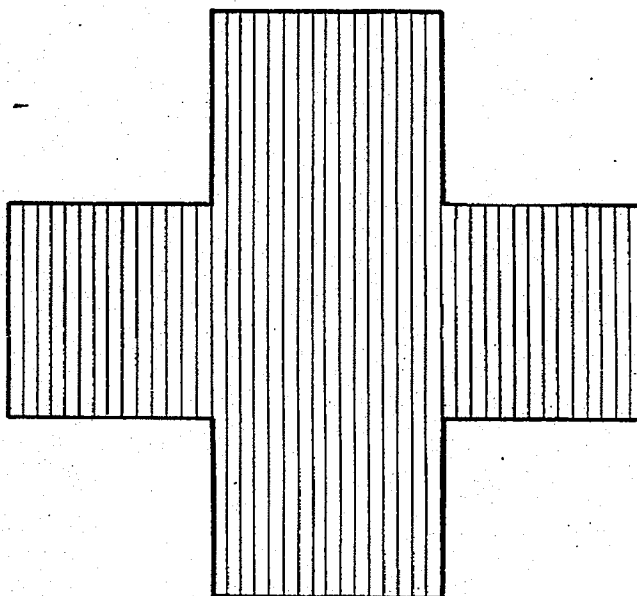
**Prior U.S. Cls.: 18 and 44**

**United States Patent and Trademark Office**

**Reg. No. 1,889,576**

**Registered Apr. 18, 1995**

**TRADEMARK  
PRINCIPAL REGISTER**



**JOHNSON & JOHNSON (NEW JERSEY CORPORATION)  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933**

**FOR: FIRST AID KITS, ADHESIVE BANDAGES, TOPICAL PREPARATIONS FOR MEDICAL AND THERAPEUTIC USE, MEDICAL ADHESIVE TAPE, GAUZE, STERILE COTTON FOR MEDICAL PURPOSES, AND WOUND DRESSINGS, IN CLASS 5 (U.S. CLS. 18 AND 44).**

**FIRST USE 0-0-1898; IN COMMERCE 0-0-1898.**

**OWNER OF U.S. REG. NO. 54,308.**

**THE DRAWING IS LINED FOR THE COLOR RED.**

**SER. NO. 74-422,859, FILED 8-9-1993.**

**PATRICIA HORRALL, EXAMINING ATTORNEY**

**Int. Cl.: 5**

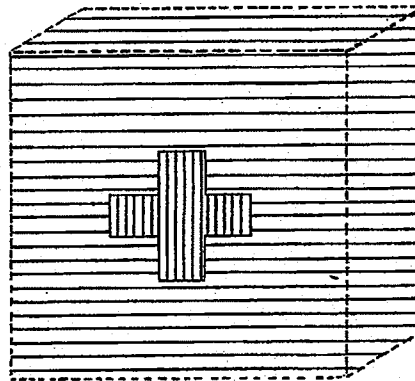
**Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52**

**United States Patent and Trademark Office**

**Reg. No. 2,515,970**

**Registered Dec. 11, 2001**

**TRADEMARK  
PRINCIPAL REGISTER**



**JOHNSON & JOHNSON (NEW JERSEY CORPORATION)  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 089337001**

**FOR: FIRST AID KITS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).**

**FIRST USE 0-0-1985; IN COMMERCE 0-0-1985.**

**OWNER OF U.S. REG. NO. 8.**

**THE DRAWING IS LINED FOR THE COLORS RED AND BLUE, AND COLOR IS CLAIMED AS A FEATURE OF THE MARK.**

**THE MARK CONSISTS OF A RED GREEK CROSS APPLIED TO A BLUE COLORED CONTAINER FOR FIRST AID KITS. THE DOTTED OUTLINE OF THE CONTAINER IS INTENDED TO SHOW THE POSITION OF THE MARK AND IS NOT A PART OF THE MARK.**

**SER. NO. 75-010,166, FILED 10-20-1995.**

**JENNIFER CHICOSKI, EXAMINING ATTORNEY**

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

United States Patent and Trademark Office

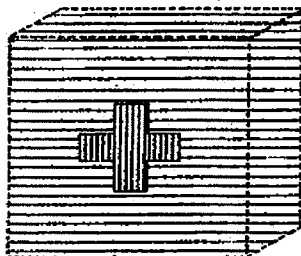
Amended

Reg. No. 2,515,970

Registered Dec. 11, 2001

OG Date Dec. 31, 2002

**TRADEMARK  
PRINCIPAL REGISTER**



JOHNSON & JOHNSON (NEW JERSEY CORPORATION)

ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 089337001

OWNER OF U.S. REG. NO. 8.

THE DRAWING IS LINED FOR THE COLORS RED AND BLUE, AND COLOR IS CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF A RED GREEK CROSS APPLIED TO A BLUE COLORED CONTAINER FOR FIRST AID KITS. THE DOTTED OUTLINE OF THE CONTAINER IS INTENDED TO SHOW THE POSITION OF THE MARK AND IS NOT A PART OF THE MARK.

FOR: FIRST AID KITS, IN CLASS 5  
(U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 0-0-1985, REGISTRANT  
MADE USE OF ANOTHER FORM OF  
THE MARK AT LEAST AS EARLY AS  
1887.; IN COMMERCE 0-0-1985.

SER. NO. 75-010,166, FILED 10-20-1995.

*In testimony whereof I have hereunto set my hand  
and caused the seal of The Patent and Trademark  
Office to be affixed on Dec. 31, 2002.*

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 3,178,913

United States Patent and Trademark Office

Registered Dec. 5, 2006

Corrected

OG Date June 24, 2008

**TRADEMARK  
PRINCIPAL REGISTER**



JOHNSON & JOHNSON (NEW JERSEY CORPORATION)

ONE JOHNSON & JOHNSON PLAZA

NEW BRUNSWICK, NJ 089337001

OWNER OF U.S. REG. NOS. 54,308, 2,788,207 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE FIRST AID, APART FROM THE MARK AS SHOWN.

THE COLOR(S) RED AND BLUE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE COLOR RED APPEARS IN THE CROSS DESIGN AS WELL AS IN THE WORDS JOHNSON & JOHNSON, AND THE COLOR BLUE APPEARS IN THE WORDS FIRST AID.

FOR: ADHESIVE MEDICAL TAPES, GAUZE PADS, STERILE ROLLED GAUZE, BANDAGES AND DRESSINGS FOR SKIN WOUNDS, STERILE COTTON AND COTTON BALLS FOR MEDICAL USE, FIRST AID CREAM, MEDICAL PLASTERS FOR THE BACK, AND FIRST AID KITS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

FIRST USE 0-0-1993, THE RED CROSS DESIGN HAS BEEN IN USE IN CONNECTION WITH MEDICAL AND SURGICAL PLASTERS (NON KNOWN AS ADHESIVE BANDAGES AND TAPES) SINCE AS EARLY AS 1887.; IN COMMERCE 0-0-1993.

SER. NO. 76-617,076, FILED 10-18-2004.

*In testimony whereof I have hereunto set my hand  
and caused the seal of The Patent and Trademark  
Office to be affixed on June 24, 2008.*

**DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE**